

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

CC: 96-45

In the Matter of)

VALOR Telecommunications of Texas, LP)
and GTE Southwest Incorporated)
Joint Petition for Waiver of the)
Definition of "Study Area" of the)
Appendix – Glossary of Part 36)

DA No. 00-1015

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OFFICE OF THE SECRETARY

OPPOSITION OF VALOR TELECOMMUNICATIONS
OF TEXAS, LP

I INTRODUCTION

On July 27, 2000, Western Wireless Corporation ("Western Wireless") submitted to the Commission a document captioned "Petition to Reject Rural Telephone Company Self-Certification." Western Wireless requested, among other things, that this petition be treated as an "*ex parte* comment" in the pending study area waiver proceeding referenced above—a proceeding that was initiated by a joint study area waiver petition filed on April 4, 2000 by Valor Telecommunications of Texas, LP ("VALOR") and GTE Southwest Incorporated ("GTE").

VALOR and GTE object to any consideration of the Western Wireless petition in their study area waiver proceeding. This is Western Wireless' third attempt to delay or derail VALOR's purchase of GTE telephone properties in New Mexico and Texas, all in apparent retaliation for VALOR's intervention in Western Wireless's ETC proceedings in those two states.¹ The New Mexico and Texas

¹ In both New Mexico and Texas, within days after VALOR filed motions to intervene in Western Wireless' pending ETC proceedings, Western Wireless filed motions requesting rehearings of the state Commissions' orders approving VALOR's purchase of the GTE properties and granting VALOR authority to operate as a local exchange company in both states.

Commissions have rejected Western Wireless' two prior efforts as such economic coercion and this Commission should do so here as well.

As is discussed in more detail below, the issue that Western Wireless seeks to raise in its petition—whether VALOR is a rural telephone company under 47 U.S.C. section 153(37)—has no bearing on whether the requested study area waiver is appropriate and should be granted. Moreover, any delay in granting the study area waiver would not be in the public interest and could cause substantial prejudice to VALOR and GTE, as their transaction is currently scheduled to close on August 31, 2000. Finally, the Western Wireless petition should not be considered in the study area waiver proceeding because the public comment period ended June 9, 2000, and there is no provision for "*ex parte* comments."

II FACTUAL BACKGROUND

VALOR has agreed to purchase local telephone assets from GTE in Texas comprising 197 exchanges. These exchanges are located in two separate GTE study areas in Texas. VALOR is not purchasing all of GTE's local exchanges in Texas; GTE (now part of Verizon) will continue to operate in Texas as a local exchange carrier.

On April 20, 2000, GTE and VALOR submitted a Joint Petition for Waiver of the Definition of Study Area in order to remove the purchased exchanges from GTE's two Texas study areas, and create a single new VALOR study area in Texas.² The Commission put the Joint Petition on Public Notice

² A related operating company, VALOR Telecommunications of New Mexico, LLC ("VALOR New Mexico"), agreed to purchase all of GTE's local telephone assets in New Mexico, consisting of 37 exchanges located in two study areas. However, since VALOR New Mexico is purchasing all of GTE's exchanges in New Mexico, there is no need to seek a study area waiver. Similarly, on June 30, 2000, another related operating company, VALOR Telecommunications of

on May 8, 2000, with comments and reply comment dates of May 29, and June 8, 2000, respectively. No comments or replies were filed by any party, and the matter is now pending before the Common Carrier Bureau.

On June 27, 2000, VALOR filed a letter with the Commission setting forth the facts that demonstrate that its New Mexico and Texas operating companies will be rural telephone companies as defined in Section 3(37) of the Communications Act, 47 U.S.C. 153(37). VALOR filed its certificate letter at this time after consulting with Commission Staff, and in recognition of fact that the VALOR operating companies expected to commence operations in Texas and New Mexico shortly after the July 1st rural certification deadline.

In its July 27 petition, Western Wireless is objecting to VALOR's self-certification, and is requesting that the Commission open up a separate proceeding to consider this issue. VALOR does not object to the Commission commencing a separate proceeding to consider VALOR's status as a rural telephone company. However, VALOR and GTE object to the consideration of this issue in their study area waiver proceeding, since Western Wireless' strategy is to delay this proceeding and, in turn, VALOR's purchase of the GTE properties.

III VALOR'S STATUS AS A RURAL TELEPHONE COMPANY UNDER 47 U.S.C. §153(37) IS IRRELEVANT TO THE STUDY AREA WAIVER DETERMINATION

VALOR's status as a rural telephone company when it commences operations is irrelevant to the question of whether the joint study area waiver petition should be granted. The boundaries of study areas were frozen by the Commission for the express purpose of preventing local exchange

Oklahoma, LLC ("VALOR Oklahoma"), closed its acquisition of all of GTE's local telephone assets in Oklahoma, which were located in a single Oklahoma study area.

carriers ("LECs") from "setting up high cost exchanges within their existing service territory as separate companies to maximize high cost support."³ Thus, the Commission has required petitions for waiver to demonstrate that (1) the relevant state commission does not object to the change in study area boundaries, (2) the change will not adversely impact the Universal Service Fund, and (3) the public interest will be served. Since the adoption of Section 54.305 of the Commission's Rules in 1997, which limits the USF available to the buyer to the per line amount for which the seller was eligible,⁴ there have been virtually no contested issues raised regarding study area waiver requests, and the FCC has granted all such requests. It is important to note that almost all of these study area waiver requests involved moving exchanges from a non-rural to a rural company.

Here, a separate Valor study area is required because Valor is not purchasing all of GTE's exchanges in Texas; GTE will continue to operate as a local exchange carrier in its existing two study areas. The question of whether Valor operating in its own newly formed study area, will meet the definition of rural telephone company has no bearing on the central purpose of the Commission's requirement that its permission, and the acquiescence of the state commission, be obtained prior to reconfiguration of a study area. The Texas Commission has indicated it does not object to the study area waiver requested by GTE and VALOR. Moreover, the Texas Commission, and the New Mexico Commission as well, have both issued orders finding that the public interest will be served by VALOR's operation of the purchased exchanges in their states.⁵ Thus, there is no reason for the Commission to consider Western Wireless' Petition in this proceeding.

³ MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Recommended Decision and Order*, 49 Fed. Reg. 48325 (1984).

⁴ 47 C.F.R. 54.305

⁵ New Mexico Public Regulation Commission, *Final Order*, Case No. 3217, June 20, 2000; Public Utility Commission of Texas, *Order*, Doc. No. 21834, June 14, 2000.

IV DELAY IN THE CONSIDERATION OF THE STUDY AREA WAIVER PETITION IS CONTRARY TO THE PUBLIC INTEREST AND WOULD PREJUDICE VALOR AND GTE.

VALOR has demonstrated in these state proceedings that it is not only committed to maintenance of reasonable rates, but to substantial service improvements as well, including the provision of advanced services to areas of Texas and New Mexico that have not previously received such services. Delay in considering the study area waiver will delay these benefits to customers—benefits that both the Texas and New Mexico Commissions found to be in the public interest. Timely action on the joint petition is also a matter of very substantial financial consequence to the parties. Extensive preparation for closing is required, not only by GTE and VALOR, but also by the financial institutions that have committed to loan VALOR the money to complete the purchase. And, most importantly, delay in the consideration of the pending, unopposed, study area waiver request could result in the loss of substantial revenues to VALOR, a start-up entity, as it may not be able to close its transaction with GTE and take over operations in Texas on August 31, 2000, as currently scheduled. These are revenues that VALOR would not be able to recover from future operations.

In contrast to this substantial prejudice to GTE and VALOR, there is no prejudice whatsoever to Western Wireless. The issues raised in Western Wireless' petition can be fully considered in the separate proceeding that Western Wireless has requested. VALOR recognizes that the Commission's self-certification process for rural telephone company status implicitly permits the Commission to examine the factual or legal claims inherent in such certifications. In the event the Commission determines to examine Western Wireless' challenge to VALOR's rural certification as set forth in Valor's June 27, 2000 letter, VALOR will respond fully and defend its eligibility. VALOR is confident it will be able to demonstrate to the Commission that its operating companies in New Mexico and

Texas meet the statutory definitions in Section 3(37) of the Act.⁶

V. CONCLUSION

For the reasons set forth above, VALOR and GTE respectfully request that the purported *ex parte* filing not be included in the record, or considered by the Commission in the study area waiver proceeding, and further request that their pending petition be addressed as soon as possible, so that the parties will be able to close their transaction on the scheduled date.

August 4, 2000

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Respectfully submitted,

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⁶ For the record, VALOR affirms the statement of facts in its June 27 letter demonstrating its qualification in Texas and New Mexico, and disputes Western Wireless' contention that Section 3(37)(D) is only applicable to LECs in existence on the date the Act was adopted. Valor did not include its Oklahoma operating company in the certification letter because that company does not meet the definition. And, contrary to Western Wireless' statement (p. 3), GTE is currently a rural telephone company in its two New Mexico study areas.

CERTIFICATE OF SERVICE

I, Nichole F. Baker, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing 4th day of August, 2000, was served by hand delivery to the following parties:


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